S.B.Civil Second Appeal No.377/2006.

Nagar Palika Mandal, Sridungargarh & Anr.

vs.

Puraram.

Date : 25.4.2007

HON'BLE MR. PRAKASH TATIA, J.

Mr.K Joshi, for the appellants.

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Heard learned counsel for the appellants.

The trial court dismissed the plaintiff's suit vide judgment and decree dated 23.11.2002. The appellate court allowed the appeal of the plaintiff/ respondent vide judgment and decree dated 8.12.2004 and granted decree for permanent injunction against the defendants/appellants.

Brief facts of the case are that the plaintiff filed a suit for permanent injunction on the basis of his old possession. The plaintiff's case is that he was in possession of the suit property since 1961. He deposited Rs.40.56p on 9.5.1961 for regularisation of the plot in dispute. However, no regularisation order

was ever passed but according to the plaintiff, he continued in possession and he constructed a house and was living with his family in the said house.

The defendants/appellants submitted written statement and admitted that the plaintiff has constructed his house and is residing with his family in the said house situated on the plot in dispute.

The plaintiff filed the suit because of the reason that the defendant Municipal Board issued a notice on 20.9.1995 to the plaintiff treating him as a trespasser.

The trial court on the basis of the evidence of the plaintiff and his witnesses observed that one of the plaintiff's witness was of the age of 45 years and he stated that since when he attained the age of understanding, he saw the possession of the plaintiff over the disputed plot but he did not disclose when he attained the age of understanding. The other oral evidence was discarded by the trial court. But the first appellate court considered the evidence of both the parties and thereafter found that the statements given by the plaintiff and his witnesses are more reliable and important fact is that the plaintiff's house is situated over the plot in dispute and the

plaintiff is residing since long and the defendants failed to produce any evidence to show that the plaintiff's possession was recent just before the notice issued by the defendants or within a short period of few years only. The defendants produced only one witness who himself admitted that he has no knowledge whether the defendants had any shop or not so as to prove the contention of the defendants that in fact, the receipt produced by the plaintiff was of some charges for any shop in the market and there is virtually no rebuttal of plaintiff's evidence. The first appellate court after considering the entire evidence recorded a finding of fact that the plaintiff has old possession.

So far as judgment of this Court delivered in the case of Sardar Dan Singh vs. Sardar Bhag Singh reported in 1999 WLC (Raj.) UC 118 is concerned, it is not in dispute that under what circumstances, the second appellate court can interfere in the finding recorded by the first appellate court but on the facts, the said judgment has no application to the present case because of the reason that it is not a case of misreading of evidence by the first appellate court.

In view of the above, I do not find any substantial question of law involved in this appeal.

Consequently, this second appeal, having no merit, is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya